

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Jones Analyst: Jennifer Bettencourt Bill Number: AB 1779
Related Bills: See Legislative History Telephone: 845-5163 Introduced Date: January 15, 2008
Attorney: Douglas Powers Sponsor:

SUBJECT: State Agencies Notify California Residents Of Breach In Security Data/if Substitute Notice Is Utilized, Provide to Office Of Privacy

SUMMARY

This bill would require that when a breach of security occurs on data systems containing personal information, any substitute notice regarding the breach also be provided to the Office of Privacy Protection (OPP).

PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to provide notification to the OPP at the earliest point possible so that they can be prepared to assist the public when a breach of security occurs.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009, and be operative for any notices required to be sent on or after that date.

POSITION

Pending.

ANALYSIS**STATE LAW**

Under current state law, any agency that owns or licenses computerized data that includes personal information and experiences a breach of security of the system containing that data must notify the affected individuals that their unencrypted information may have been acquired by an unauthorized person. Notification of the breach of security can be provided by written notice, electronic notice, or substitute notice if the cost of providing the notice would exceed \$250,000 or involves a class of affected persons in excess of 500,000 persons. Substitute notice would be accomplished by e-mail notification, posting of the notice in a conspicuous place on the agency's web site, or notifying major statewide media.

Board Position:

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Department Director

Date

Selvi Stanislaus

3/5/08

The Statewide Information Management Manual (SIMM) requires agencies with systems that maintain personal information to provide an incident report within ten days to the California Highway Patrol and OPP if a breach of the system has occurred.

THIS BILL

This bill would require any agency, person, or business that provides substitute notice¹ when it encounters a breach of the security of data systems containing personal information to provide substitute notice to the OPP in addition to major statewide media.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The notice Franchise Tax Board (FTB) sends to inform a taxpayer of a breach of security involving their personal information includes the use of the mailing address of the taxpayer that is obtained from confidential tax returns. Because current law prohibits FTB from disclosing confidential tax information for purposes other than tax administration, FTB would not be able to use its current notification format to provide OPP notice of the breach as required by this bill.

To accommodate the requirements of this bill and adhere to existing disclosure restrictions, FTB would revise current notification formats to separate the confidential tax information used to correspond with the taxpayer from the notification of the breach of security that would be provided to OPP. This revision to current practice could be accomplished within the department's annual updates.

LEGISLATIVE HISTORY

AB 779 (Jones, 2007/2008) would have the same requirements as this bill, except it would have reduced the cost threshold under which state agencies can elect to provide substitute notice in the event of a breach of security of data systems containing personal information. AB 779 was vetoed by Governor Schwarzenegger, with the veto message stating that "the marketplace has already assigned responsibilities and liabilities that provide for the protection of consumers. (See Appendix A for the complete veto message.)

SB 364 (Simitian, 2007/2008) would have the same requirements as this bill, except it would require that a copy of any notification of breach be sent to the OPP and would not limit it to the substitute notification. SB 364 is currently in the Senate Appropriations Committee.

¹ A substitute notice is issued if the cost of providing the notice would exceed \$250,000 or the number of affected persons to be notified exceeds 500,000, or the agency, person or business does not have sufficient contact information.

SB 852 (Bowen, 2005/2006) would have expanded notice requirements to taxpayers on security breaches of personal information from only computerized data to all forms of data maintained by agencies and businesses. This bill did not pass out of the Assembly Committee on Business and Professions.

SB 1279 (Bowen, 2003/2004) would have required a state agency to provide a credit monitoring service to a person whose personal information was or may have been acquired by an unauthorized person due to a breach of security in a state agency's computer system. This bill did not pass out of the Assembly Committee on Business and Professions.

AB 700 (Simitian, Stats. 2002, Ch. 1054) established the notice requirements for breach of security of systems containing personal information.

OTHER STATES' INFORMATION

Review of *Illinois, Massachusetts, Michigan, Minnesota, and New York* found that these states have similar laws relating to the protection of personal information. All of these states used the California laws² as a starting point in shaping their own laws. These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

POLICY CONCERN

Because current SIMM instructions require state agencies that maintain systems containing personal information to provide an Incident Report to OPP within ten days of the incident, the similar provisions of this bill, as they relate to state agencies, are duplicative.

LEGISLATIVE STAFF CONTACT

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² Civil Code Sections 1798.29 – 1798.84

Appendix A

To the Members of the California State Assembly:

I am returning Assembly Bill 779 without my signature.

Protecting the personal information of every Californian is very important to me and I am committed to strong laws that safeguard every individual's privacy and prevent identity theft. Clearly, the need to protect personal information is increasingly critical as routine commercial transactions are more and more exclusively accomplished through electronic means.

However, this bill attempts to legislate in an area where the marketplace has already assigned responsibilities and liabilities that provide for the protection of consumers. In addition, the Payment Card Industry has already established minimum data security standards when storing, processing, or transmitting credit or debit cardholder information. This industry has the contractual ability to mandate the use of these standards, and is in a superior position to ensure that these standards keep up with changes in technology and the marketplace. This measure creates the potential for California law to be in conflict with private sector data security standards.

While I support many of the provisions of this bill, it fails to provide clear definition of which business or agency "owns" or "licenses" data, and when that business or agency relinquishes legal responsibility as the owner or licensee. This issue and the data security requirements found in this bill will drive up the costs of compliance, particularly for small businesses.

I encourage the author and the industry to work together on a more balanced legislative approach that addresses the concerns outlined above.

Sincerely,

Arnold Schwarzenegger